

1
2
3
4
5
6
7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT TACOMA

10 SHERRIE B.,

11 Plaintiff,

12 v.

13 COMMISSIONER OF SOCIAL
SECURITY,

14 Defendant.

Case No. 3:18-cv-05348-TLF

ORDER AFFIRMING
DEFENDANT'S DECISION TO
DENY BENEFITS

15 Sherrie B. has brought this matter for judicial review of defendant's denial of her
16 application for disability insurance benefits. The parties have consented to have this matter heard
17 by the undersigned Magistrate Judge. 28 U.S.C. § 636(c); Federal Rule of Civil Procedure 73;
18 Local Rule MJR 13. For the reasons below, the undersigned affirms defendant's decision to deny
19 benefits.

20 I. ISSUES FOR REVIEW

- 21 1. Did the ALJ err at step two in not finding that plaintiff had "severe"
22 mental-health impairments, and if so was this error harmless?
23 2. Did the ALJ err in weighing the medical opinion evidence?
24 3. Did the ALJ give adequate reasons to discount plaintiff's testimony?
25

1 4. Did the ALJ give adequate reasons to discount lay testimony from
2 plaintiff's husband?

3 II. PROCEDURAL BACKGROUND

4 Plaintiff applied for disability insurance benefits in July 2012, alleging she became
5 disabled as of November 1, 2004. Dkt. 11, Administrative Record (AR) 682. Her application was
6 denied at the initial and reconsideration levels of administrative review. *Id.* After a hearing, an
7 administrative law judge (ALJ) issued an unfavorable decision in June 2014. *Id.* Plaintiff
8 appealed, and this Court remanded. *Id.*; *see* AR 780-800.

9 After another hearing, an ALJ issued another unfavorable written decision on January 4,
10 2018. AR 698; AR 705-46 (hearing transcript). Because plaintiff's date last insured was
11 December 31, 2008, the relevant period for determining whether plaintiff was disabled is
12 November 1, 2004, to December 31, 2008. AR 683.

13 The ALJ performed the five-step sequential analysis. AR 684-98. He determined that
14 there were jobs existing in significant numbers in the national economy that plaintiff could
15 perform, and therefore that plaintiff was not disabled during the relevant period. AR 696-98.
16 Plaintiff filed a complaint with this Court, seeking reversal and remand for an award of benefits.

17 III. STANDARD OF REVIEW

18 The Court will uphold an ALJ's decision unless: (1) the decision is based on legal error;
19 or (2) the decision is not supported by substantial evidence. *Revels v. Berryhill*, 874 F.3d 648,
20 654 (9th Cir. 2017). Substantial evidence is "such relevant evidence as a reasonable mind might
21 accept as adequate to support a conclusion." *Biestek v. Berryhill*, 139 S. Ct. 1148, 1154 (2019)
22 (quoting *Consolidated Edison Co. v. NLRB*, 305 U.S. 197, 229 (1938)). This requires "more than
23 a mere scintilla," though "less than a preponderance" of the evidence. *Id.*; *Trevizo v. Berryhill*,
24 871 F.3d 664, 674-75 (9th Cir. 2017).

1 The Court must consider the administrative record as a whole. *Garrison v. Colvin*, 759
2 F.3d 995, 1009 (9th Cir. 2014). The Court is required to weigh both the evidence that supports,
3 and evidence that does not support, the ALJ’s conclusion. *Id.* The Court may not affirm the
4 decision of the ALJ for a reason upon which the ALJ did not rely. *Id.*

5 “If the evidence admits of more than one rational interpretation,” that decision must be
6 upheld. *Allen v. Heckler*, 749 F.2d 577, 579 (9th Cir. 1984). That is, “[w]here there is
7 conflicting evidence sufficient to support either outcome,” the Court “‘must affirm the decision
8 actually made.’” *Id.* (quoting *Rhinehart v. Finch*, 438 F.2d 920, 921 (9th Cir. 1971)).

9 IV. DISCUSSION

10 The Commissioner uses a five-step sequential evaluation process to determine whether a
11 claimant is disabled. 20 C.F.R. § 404.1520. At step four of that process, the claimant’s residual
12 functional capacity (RFC) is assessed to determine whether past relevant work can be performed,
13 and, if necessary, at step five to determine whether an adjustment to other work can be made.
14 *Kennedy v. Colvin*, 738 F.3d 1172, 1175 (9th Cir. 2013). At step five, the Commissioner has the
15 burden of proof, which can be met by showing a significant number of jobs exist in the national
16 economy that the claimant can perform. *Tackett v. Apfel*, 180 F.3d 1094, 1099 (9th Cir. 1999); 20
17 C.F.R. § 404.1520(e).

18 A. Step Two Severe Impairments Finding

19 Plaintiff first asserts that the ALJ erred in finding, based on testimony from medical
20 expert Joseph Carver, Ph.D., that plaintiff “had no psychiatric medically determined impairment
21 diagnosed according to the standards of the Regulations,” and that this error “undermined his
22 entire decision.” Dkt. 15, p. 3; AR 685. The Ninth Circuit has held that if an ALJ decides step
23 two of the sequential evaluation in a claimant’s favor, an error in failing to designate a particular
24

1 condition “severe” at step two is harmless. *Buck v. Berryhill*, 869 F.3d 1040, 1048-49 (9th Cir.
2 2017). Here, the ALJ decided step two in plaintiff’s favor, and plaintiff concedes that the ALJ
3 did consider mental-health limitations in assessing plaintiff’s RFC. *See* AR 685, 687, 692-94.
4 Accordingly, plaintiff has not identified any harmful error at step two.

5 B. Medical Opinion Evidence

6 1. Treating Physician Kari Lima, M.D.

7 A non-treating, non-examining source’s opinion is generally entitled to less weight than a
8 treating or examining source’s opinion. *Lester v. Chater*, 81 F.3d 821, 830-31 (9th Cir. 1996). To
9 reject the uncontradicted opinion of a treating or examining physician, an ALJ must provide
10 “clear and convincing” reasons. *Trevizo v. Berryhill*, 871 F.3d 664, 675 (9th Cir. 2017) (quoting
11 *Ryan v. Comm’r of Soc. Sec.*, 528 F.3d 1194, 1198 (9th Cir. 2008)). When the treating or
12 examining physician’s opinion is contradicted, the ALJ may reject that opinion “by providing
13 specific and legitimate reasons that are supported by substantial evidence.” *Id.* An ALJ “may
14 reject the opinion of a non-examining physician by reference to specific evidence in the medical
15 record.” *Sousa v. Callahan*, 143 F.3d 1240, 1244 (9th Cir. 1998).

16 Kari Lima, M.D., completed a medical source statement in June 2017, answering
17 questions regarding plaintiff’s conditions between November 1, 2004, and July 8, 2012. AR 944.
18 She wrote that plaintiff had received treatment at the clinic where Dr. Lima worked since “at
19 least 2006.” *Id.* However, Dr. Lima did not begin treating plaintiff until 2014 – six years after the
20 latest date in the relevant time period. *Id.* (As noted above, the relevant period for determining
21 disability is November 1, 2004, to December 31, 2008. AR 683.)

22 Dr. Lima opined that plaintiff’s depression, anhedonia, and paranoid thoughts prevented
23 plaintiff from following through with most recommended testing and treatment. AR 944, 947.
24
25

1 She opined that plaintiff would have many limitations in her ability to work, including that her
2 psychiatric symptoms, including depression, would require her to take frequent and variable
3 unscheduled breaks. She also opined that plaintiff would be physically limited due to venous
4 insufficiency and edema, limiting her ability to stand and sit and requiring that she be able to
5 elevate her legs “as much as possible.” AR 944-45.

6 The ALJ gave Dr. Lima’s opinion “limited weight.” He found that the opinion was “not
7 consistent with the longitudinal record”; he observed that Dr. Lima was unable to find treatment
8 notes for the entire period at issue; he found that Dr. Lima’s “opinion is dated well after the time
9 period at issue”; and he found that, “as noted by [reviewing expert] Dr. Carver, there are no
10 treatment records that support Dr. Lime’s [sic] opinion.” AR 693-94.

11 These were specific and legitimate reasons to reject Dr. Lima’s opinion, and substantial
12 evidence supports them.

13 First, the ALJ observed that Dr. Lima gave her opinion well after the relevant period.
14 “[R]eports containing observations made after the period for disability are relevant to assess the
15 claimant's disability.” *Smith v. Bowen*, 849 F.2d 1222, 1225 (9th Cir. 1988). This is because
16 “medical reports are inevitably rendered retrospectively and should not be disregarded solely on
17 that basis.” *Id.*

18 Nonetheless, an ALJ may disregard an opinion made outside the relevant period if the
19 ALJ gives sufficient reasons. *See Turner v. Comm’r of Soc. Sec.*, 613 F.3d 1217, 1224 (9th Cir.
20 2010) (date of “other source” opinion, rendered outside relevant period, was germane reason to
21 not address it); *Carmickle v. Comm’r of Soc. Sec. Admin.*, 533 F.3d 1155, 1165 (9th Cir. 2008)
22 (opinion on conditions predating relevant period had limited relevance); *Johnson v. Astrue*, 303
23
24
25

1 F. App'x 543, 545 (9th Cir. 2008) (unpublished) (affirming ALJ's rejection of medical opinions
2 that were remote in time and reliance on more recent opinions).

3 Dr. Lima did not begin treating plaintiff until six years after the relevant period and
4 completed the medical-source statement over eight years after the relevant period. AR 944.
5 (Relatedly, the form opinion pertained to the period from November 1, 2004, to July 8, 2012, AR
6 944, and did not specify what conditions were present during the relevant period.)

7 The ALJ could validly find that Dr. Lima's opinion was entitled to less weight because it
8 was too remote and therefore less relevant; dated many years after the relevant period. *See*
9 *Johnson*, 303 F. App'x at 545.

10 Second, the ALJ found that Dr. Lima's opinions lacked support from treatment notes. AR
11 693-94. Dr. Carver's testimony supports this finding. *See* AR 720-24. Further, plaintiff does not
12 cite any treatment notes that would support the severe limitations Dr. Lima found. *See* Dkt. 15,
13 pp. 8-10. As discussed below, the treatment notes in the record do not show plaintiff to be
14 severely limited—due to either her leg conditions, *see* AR 368 (“small” amount of edema), AR
15 369-70 (negative straight-leg-raise tests, normal strength and sensation, and intact hip range-of-
16 motion), 417 (normal musculoskeletal signs), or her mental-health conditions, *see* AR 327, 428,
17 480 (“normal” mental status results). The ALJ is responsible for determining credibility and
18 resolving ambiguities and conflicts in medical evidence, and substantial evidence supports his
19 conclusions in this case. *See Reddick v. Chater*, 157 F.3d 715, 722 (9th Cir. 1998).

20 2. Reviewing Physicians Harvey Alpern, M.D., and Nossa Maya, M.D.

21 Dr. Alpern and Dr. Maya testified as medical experts at plaintiff's 2014 and 2017 ALJ
22 hearings, respectively.

23 The ALJ gave “great weight” to Dr. Maya's opinion on plaintiff's physical limitations, in
24 part because the ALJ found her opinion consistent with that of Dr. Alpern. AR 692. Dr. Alpern
25

1 testified that it is “usually” sufficient for a person with plaintiff’s conditions to elevate the legs
2 “10 minutes mid-morning, 30 minutes midday, and 10 minutes mid-afternoon, in addition to
3 unrestricted in the morning and unrestricted in the evening,” although “[s]ome people who don’t
4 work elevate a lot more. Some people that do work elevate less.” AR 44-45.

5 Plaintiff asserts that “the ALJ errs by failing to accurately describe these medical
6 opinions.” Dkt. 15, p. 10. She contends that the ALJ erred in relying on Dr. Maya and Dr.
7 Alpern’s opinions because Dr. Alpern “did not state that” the amount and frequency of leg
8 elevation he specified “would have been sufficient for [plaintiff]” and “Dr. Alpern did not
9 clearly define how much time [plaintiff] would have to elevate her legs.” Dkt. 15, p. 11.

10 This Court discussed and rejected this argument in plaintiff’s prior appeal. AR 794-96.
11 “The law of the case doctrine generally prohibits a court from considering an issue that has
12 already been decided by that same court or a higher court in the same case.” *Stacy v. Colvin*, 825
13 F.3d 563, 67 (9th Cir. 2016). Plaintiff makes no argument that this case involves the narrow
14 circumstances in which a court should decline to apply the law of the case doctrine. *See Merritt*
15 *v. Mackey*, 932 F.2d 1317, 1320 (9th Cir. 1991). Accordingly, plaintiff’s argument regarding the
16 ALJ’s consideration of Dr. Alpern’s opinion has no merit.

17 Plaintiff also recounts several parts of Dr. Maya’s testimony and contends that it
18 “supports Dr. Lima’s opinion that Berg would need to elevate her legs ‘as much as possible.’”
19 Dkt. 15, p. 11; *see* AR 946. Plaintiff asserts that “Dr. Maya never considered Berg’s testimony
20 about how often she actually needed to elevate her legs.” But plaintiff offers no support for this
21 assertion. Nor does she cite any authority indicating that a reviewing medical expert is required
22 to credit a claimant’s testimony. Thus, although plaintiff argues for a different interpretation of
23 Dr. Maya’s testimony, she does not identify any legal error in the ALJ’s decision to accord
24
25

1 “great weight” to Dr. Maya’s opinion. *See* AR 692; *Burch v. Barnhart*, 400 F.3d 676, 679 (9th
2 Cir. 2005) (“Where evidence is susceptible to more than one rational interpretation, it is the
3 ALJ’s conclusion that must be upheld.”).

4 3. Reviewing Physician Joseph Carver, Ph.D.

5 Plaintiff asserts that the ALJ erred in giving “significant weight” to Dr. Carver’s opinion
6 because “Dr. Carver misunderstood or misread the evidence,” Dkt. 15, p. 11, referring to the
7 reasons plaintiff identifies in her argument that the ALJ erred at step two. In that argument,
8 plaintiff lists treatment notes that, she asserts, contradict Dr. Carver’s testimony. Dkt. 15, p. 4.
9 But she does not explain with any specificity how this is so and thus fails to identify any error.
10 *See Carmickle v. Comm’r of Soc. Sec. Admin.*, 533 F.3d 1155, 116 n.2 (9th Cir. 2008) (noting
11 that court “ordinarily will not consider matters on appeal that are not specifically and distinctly
12 argued in an appellant’s opening brief”) [quoting *Paladin Assocs., Inc. v. Mont. Power Co.*, 328
13 F.3d 1145, 1164 (9th Cir. 2008)]. To the extent that plaintiff proposes a different interpretation
14 of the evidence, her argument does not show that the ALJ’s interpretation was *not* reasonable.
15 *See Burch*, 400 F.3d at 679.

16 4. Examining Psychologists Kimberly Wheeler, Ph.D., and Keri Tarantino, Psy.D.

17 Plaintiff also asserts that the ALJ erred in rejecting the 2012 opinions of Dr. Wheeler and
18 Dr. Tarantino. AR 693; *see* AR 628, 635. The ALJ found that those opinions were “based on
19 one-time evaluations that occurred well outside of the relevant time period. Accordingly,” the
20 ALJ concluded, “they do not proved evidence of probative value in assessing the claimant’s
21 functioning during the time period at issue.” AR 693.

22 The ALJ also responded to plaintiff’s argument that because her impairments are
23 longstanding, “evidence of later functional limitations relates back to the time period at issue”:
24 citing Dr. Carver’s testimony, the ALJ concluded that even if plaintiff “had personality disorder
25

1 or mental health impairments during the relevant time period, the overall evidence does not
2 demonstrate disabling functional limitations from any mental health condition.” *Id.*; *see* AR 723-
3 24 (Dr. Carver testified that plaintiff’s impairments “could be accommodated by just occasional
4 contact with the general public, . . . workers[,] and supervisors”).

5 Plaintiff correctly points out that the ALJ could not reject Drs. Wheeler and Tarantino’s
6 opinions solely because they were based on one-time examinations. *See* 20 C.F.R. §
7 404.1527(c)(i) (citing the “frequency of examination” as one factor used to weigh medical
8 opinions); *Williams v. Colvin*, 24 F. Supp. 3d 901, 914 (N.D. Cal. 2014) (“The fact of a one-time
9 examination, without any analysis or assessment as to the nature and quality of that examination,
10 is not a sufficient basis for the ALJ’s decision to reject Dr. Johnson’s opinion.”).

11 Nonetheless, the ALJ’s reasons were specific and legitimate when taken together. The
12 ALJ considered the four-year gap between the relevant period and Drs. Wheeler and Tarantino’s
13 opinions. The ALJ noted that diagnoses do not demonstrate functional limitations, and he found
14 that Dr. Carver’s testimony, which specifically pertained to the relevant period, was more
15 probative of plaintiff’s functional limitations during that period. These were valid consideration
16 in weighing Drs. Wheeler and Tarantino’s opinions.

17 Plaintiff asserts that “these opinions are significant because they provide further support
18 for Dr. Lima’s opinion.” The ALJ’s reasons, and the Court’s analysis for affirming the ALJ’s
19 rejection of Dr. Lima’s opinion, are discussed in part IV.B.1, above.

20 5. Reviewing Psychologist John F. Robinson, Ph.D.

21 Plaintiff devotes a subsection of her brief to summarizing Dr. Robinson’s reviewing
22 opinion and the ALJ’s decision to give it “no weight.” Dkt. 15, p. 12; *see* AR 110, 658, 694.
23 Plaintiff asserts only that “this opinion is consistent with and provides further support for Dr.
24
25

1 Lima's opinion." Dkt. 15, p. 12. Plaintiff does not specifically and distinctly identify any error in
2 the ALJ's discussion. *See Carmickle v. Comm'r of Soc. Sec. Admin.*, 533 F.3d 1155, 1161 n.2
3 (9th Cir. 2008); *see also Molina v. Astrue*, 674 F.3d 1104, 1111 (9th Cir. 2012) (holding that the
4 burden of showing harmful error falls on the party attacking an agency's determination).

5 C. Plaintiff's Testimony

6 Plaintiff challenges the ALJ's decision to discount her testimony about the nature and
7 severity of her symptoms. Plaintiff testified about her impairments as she experienced them
8 during the relevant period—specifically lymphedema (leg swelling) and depression. AR 56-58,
9 64-66. First, plaintiff summarizes treatment notes that contain observations about plaintiff's
10 lymphedema (leg swelling) and her mental health conditions. Dkt. 15, pp. 5-8. It appears that
11 plaintiff is arguing that the treatment record considered as a whole shows that her testimony
12 should not have been discounted by the ALJ. Dkt. 15 at 8.

13 In weighing a plaintiff's testimony, an ALJ must use a two-step process. First, the ALJ
14 must determine whether there is objective medical evidence of an underlying impairment that
15 could reasonably be expected to produce some degree of the alleged symptoms. *Trevizo v.*
16 *Berryhill*, 871 F.3d 664, 678 (9th Cir. 2017). If the first step is satisfied and there is no evidence
17 of malingering, the second step allows the ALJ to reject the claimant's testimony of the severity
18 of symptoms if the ALJ can provide specific findings and clear and convincing reasons for
19 rejecting the claimant's testimony. *Id.*

20 Here, the ALJ gave clear, convincing, and supported reasons for discounting plaintiff's
21 testimony regarding both her lymphedema and her mental health.

22 First, the ALJ found that the degree of limitations plaintiff alleged was inconsistent with
23 the objective evidence in the record. AR 688. Inconsistency with objective evidence can satisfy
24 the clear and convincing requirement. *Regennitter v. Commissioner of Social Sec. Admin.*, 166

1 F.3d 1294, 1297 (9th Cir. 1998). But an ALJ may not reject a claimant’s subjective symptom
2 testimony “solely because the degree of pain alleged is not supported by objective medical
3 evidence.” *Orteza v. Shalala*, 50 F.3d 748, 749-50 (9th Cir. 1995) (internal quotation marks
4 omitted and emphasis added); *Byrnes v. Shalala*, 60 F.3d 639, 641-42 (9th Cir. 1995) (applying
5 rule to subjective complaints other than pain).

6 Substantial evidence supports the ALJ’s finding that the objective evidence undermines
7 plaintiff’s testimony about her leg condition. Plaintiff was noted to have a “small” amount of
8 edema in April 2006. AR 368. At a physical therapy clinic in February 2007, she showed
9 negative straight-leg-raise tests, normal strength and sensation in the legs, and intact range of
10 motion in the hips. AR 369-70. Her provider noted lymphedema in March 2008 and referred her
11 to a lymphedema clinic, while advising that weight loss would improve her symptoms in general.
12 AR 418. Plaintiff showed normal musculoskeletal signs on examination. AR 417. At a May 2008
13 visit, plaintiff’s provider did not note any physical-exam findings other than that plaintiff was
14 overweight. AR 411. As the ALJ noted, plaintiff showed leg swelling in April 2008. The record
15 shows that plaintiff received treatment for this condition over the next five months and that it
16 improved “dramatically.” AR 689; *see* AR 430, 439, 444, 449, 450, 556 (reporting that “pain
17 overall has dramatically decreased” with treatment).

18 Accordingly, the ALJ could reasonably conclude that the objective evidence is
19 inconsistent with plaintiff’s allegation that she had to elevate her legs constantly due to
20 lymphedema.

21 Second, the ALJ found that the limitations plaintiff alleged were also inconsistent with
22 the amount of treatment she needed or sought during the relevant period. AR 688. This, too, can
23
24
25

1 provide a clear and convincing reason to discount a plaintiff's symptom testimony. *See Fair v.*
2 *Bowen*, 885 F.2d 597, 603 (9th Cir. 1989); *Trevizo*, 871 F.3d at 680.

3 Substantial evidence supports this reasoning with respect to plaintiff's leg condition.
4 Plaintiff's physician advised her to elevate her legs "regularly" in July 2006. AR 366. At other
5 visits, her providers did not advise or discuss elevating her legs. *See* AR 368, 418, 450.
6 Lymphedema did not become a focus of treatment until March 2008. AR 430. When it was
7 treated, it improved greatly. AR 556. The ALJ accounted for the Dr. Alpern's testimony that it is
8 "usually sufficient for someone with plaintiff's to elevate the legs "10 minutes mid-morning, 30
9 minutes midday, and 10 minutes mid-afternoon, in addition to unrestricted in the morning and
10 unrestricted in the evening," AR 44-45, and the Dr. Maya's testimony that plaintiff would not
11 need to elevate more often than once every two hours in an eight-hour workday, AR 730, 734.
12 Plaintiff again has not shown that the ALJ's findings were unreasonable. *See Reddick*, 157 F.3d
13 at 722 (ALJ responsible for determining credibility and resolving ambiguities and conflicts in
14 medical evidence).

15 Substantial evidence also supports the ALJ's finding that plaintiff's allegations about her
16 mental health were inconsistent with the amount of treatment recommended and sought during
17 the relevant period. Plaintiff's provider noted in January 2005 that plaintiff reported stress about
18 her living situation and showed paranoid ideation and discussed seeking counseling and taking
19 medications. AR 484 (noting plaintiff appeared her usual self, though having "what appears to be
20 paranoid ideation"). In January 2005, she had not started the medication (Wellbutrin), and no
21 remarkable mental signs were noted. AR 483.

22 In March 2005, her provider again noted no signs, while writing that "[s]he again
23 declines any other help with her stress issues." AR 480. In March 2006, her provider noted
24
25

1 “mental status normal,” though plaintiff appeared anxious and stressed. AR 327. In August 2006,
2 her provider noted she had “poor” compliance with treatment and had not started a medication
3 (Celexa) because of fears about side effects and because “it was very hot.” AR 362.

4 She had a “normal” mental status in January 2007. AR 352. The next month, she
5 “appear[ed] somewhat depressed and anxious,” but no additional treatment was recommended.
6 AR 344. She again had an anxious mood in July 2007, but she also continued to avoid
7 medications. AR 385. In March 2008, she showed poor insight and mild paranoid ideation,
8 though she was fully oriented and showed intact memory. AR 417-18. She declined to talk about
9 therapy. *Id.* She declined Wellbutrin for depression in May 2008 and was prescribed Celexa
10 instead. AR 410, 412. Later that month, she showed a “good initial response” to Celexa,
11 improved affect, and a “normal” mental status. AR 428.

12 An ALJ may discount a plaintiff’s pain testimony based on an “unexplained or
13 inadequately explained failure to seek treatment or to follow a prescribed course of treatment.”
14 *Molina v. Astrue*, 674 F.3d 1104, 1112 (9th Cir. 2012) (quoting *Tommasetti v. Astrue*, 533 F.3d
15 1035, 1039 (9th Cir. 2008)). The ALJ may not do so “without considering possible reasons he or
16 she may not comply with treatment or seek treatment consistent with the degree of his or her
17 complaints.” SSR 16-3p, at *9. The Ninth Circuit has “particularly criticized the use of a lack of
18 treatment to reject mental complaints both because mental illness is notoriously underreported
19 and because ‘it is a questionable practice to chastise one with a mental impairment for the
20 exercise of poor judgment in seeking rehabilitation.’” *Regennitter*, 166 F.3d at 1299–1300.

21 Here, the ALJ adequately considered plaintiff’s reasons for not seeking more extensive
22 mental-health treatment during the relevant period. *See* SSR 16-3p, at *9. Plaintiff does not
23 support her assertion that “every physician who discussed this issue agreed that Berg’s paranoid
24
25

1 personality disorder is the reason she is resistant to treatment,” Dkt. 15, pp. 13-14. Rather, the
2 only provider to make this explicit connection appeared to be Dr. Lima. AR 944, 947. Dr. Carver
3 testified that the record showed plaintiff’s “paranoid personality” may have made her resistant to
4 seeking treatment and examinations and contributed to her “inappropriate response[s]” during
5 Dr. Wheeler’s examination. AR 715-18. The providers who treated plaintiff during the relevant
6 period did not find that her mental-health conditions were preventing her from seeking treatment.
7 *See, e.g.*, AR 344, 418, 480.

8 The ALJ reviewed both the objective mental-status findings and the evidence that
9 paranoia made plaintiff resistant to more extensive mental health treatment. AR 690-91. He
10 reasonably concluded that plaintiff’s report of debilitating mental-health conditions was
11 inconsistent with the amount of treatment she sought and was prescribed. AR 690. Although the
12 record indicates that psychological conditions contributed to plaintiff’s reluctance to seek
13 treatment, the record also supports the ALJ’s finding that even with limited treatment plaintiff’s
14 mental-health conditions did not significantly limit her. *See* AR 344, 352, 428, 483, 484 (mental-
15 status exams); AR 723-24 (Dr. Carver testimony on workplace limitations).

16 Accordingly, there is substantial evidence to support the ALJ’s decision to discount
17 plaintiff’s testimony.

18 D. Lay Testimony

19 Plaintiff assigns error to the ALJ’s decision to give “limited weight” to the testimony of
20 plaintiff’s husband. Plaintiff asserts only that the ALJ’s reasons “are not supported by substantial
21 evidence, and they are not germane to” plaintiff’s husband. Dkt. 15, p. 17. She does not support
22 this conclusory assertion with any argument. Accordingly, the Court does not address it. *See*
23 *Carmickle v. Comm’r of Soc. Sec. Admin.*, 533 F.3d 1155, 1161 n.2 (9th Cir. 2008); *Independent*
24 *Towers of Washington v. Washington*, 350 F.3d 925, 929-30 (9th Cir. 2003).

1 CONCLUSION

2 Based on the above analysis, plaintiff has not identified a reversible error in the ALJ's
3 decision. Accordingly, the Defendant's decision to deny benefits is AFFIRMED.

4 Dated this 19th day of August, 2019.

5
6
7 

8 Theresa L. Fricke
9 United States Magistrate Judge
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25